

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST COMMUNICATIONS CORPORATION, LCI INTERNATIONAL TELECOM CORP., USLD COMMUNICATIONS, INC., PHOENIX NETWORK, INC., AND TELEDISTANCE, INC.	DOCKET NOS. WRU-00-12-419 TF-00-42
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**ORDER GRANTING WAIVER AND REQUEST TO
WITHDRAW TARIFF**

(Issued June 22, 2000)

BACKGROUND

On February 23, 2000, Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., Phoenix Network, Inc. (collectively, the Qwest Subs), and TeleDistance, Inc. (TeleDistance), filed a notification of intent of TeleDistance to provide interexchange services in Iowa, of the assignment of selected assets from the Qwest Subs to TeleDistance, a proposed tariff for TeleDistance (identified as TF-00-42), and a request for waiver of the Board's anti-slamming rules, 199 IAC 22.23(2).

Qwest Communications International, Inc. (Qwest), is the parent company of the Qwest Subs. In Docket No. SPU-99-27, the Board approved a merger between Qwest and U S WEST Communications, Inc. (U S WEST). As a part of that merger,

and pursuant to Section 271 of the Federal Communications Act of 1996, Qwest and its affiliates must discontinue providing interLATA service in the U S WEST region prior to closing of the merger. In order to divest itself of those services, Qwest has organized a new corporate subsidiary, TeleDistance, and intends to transfer the in-region interLATA business of the Qwest Subs to TeleDistance, along with associated assets. TeleDistance will then be sold to a third-party buyer that had not been identified as of the time the waiver request was filed.

On March 14, 2000, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an initial response to the notification. Consumer Advocate stated it had no present reason to oppose the filing or waiver request, but material details remained outstanding, discovery could not be completed until those details became known, and Consumer Advocate therefore believed it would be premature for the Board to rule on the waiver request at this time. Consumer Advocate asked the Board to defer action on the filing until additional details are filed in support of the request for waiver and Consumer Advocate had an opportunity to consider those details. Consumer Advocate committed to file a further response to the filing within 20 days of the date the additional information is filed. Finally, Consumer Advocate stated that counsel for the Qwest Subs has indicated to Consumer Advocate that the Qwest Subs have no objection to this procedure.

Also on March 14, 2000, AT&T Communications of the Midwest, Inc. (AT&T), filed a petition to intervene in this docket. On April 10, 2000, AT&T filed a withdrawal

of its petition to intervene, stating that AT&T believes the concerns it has with the application will be addressed by the Federal Communications Commission (FCC) in its ongoing review of the U S WEST-Qwest merger.

Also on April 10, 2000, the Qwest Subs filed a notification of the proposed transfer of the stock of TeleDistance Holdings, Inc. (the parent company of TeleDistance), from Qwest to Touch America, Inc. (Touch America). Control of TeleDistance would be transferred to Touch America at the same time. The Qwest Subs stated that, as detailed in the February 23, 2000, filing, the Qwest Subs will be merged into TeleDistance and TeleDistance (and its parent corporation) will then be transferred to Touch America, all just prior to the closing of the Qwest-U S WEST merger. The Qwest Subs further stated that, after the transfer, the name of TeleDistance Holdings, Inc., will be changed to Touch America Services Holdings, Inc., and the name of TeleDistance will be changed to Touch America Services, Inc. Finally, the Qwest Subs modified their original request for waiver to include Touch America as an applicant. The applicants provided additional information about the financial, managerial, and technical resources of Touch America.

In the April 10, 2000, filing, the applicants also state that "Touch America has agreed to maintain the rates and terms previously offered by the respective Qwest operating subsidiaries for a period of 90 days following the consummation of the Stock Transfer."

On April 28, 2000, the applicants filed further information for the Board's consideration. Applicants stated that the accounts being transferred to TeleDistance, and then to Touch America, include all of the Qwest Subs' intraLATA and interLATA long distance business in Iowa, but do not include any local business the Qwest Subs may have in Iowa.

The April 28, 2000, filing also addressed an issue relating to one of the Qwest Subs, USLD Communications, Inc. (USLD). USLD is an alternative operator services (AOS) company as defined in Iowa Code § 476.91(1)"a" (1999). As a result, USLD is subject to the full regulatory jurisdiction of the Board, pursuant to Iowa Code § 476.91(2). In the April 28, 2000, filing, the Qwest Subs and TeleDistance stated that the interexchange services that TeleDistance will provide are expected to include less than 50 percent origination from hotels, motels, and truck stops. While the Qwest Subs included a proposed TeleDistance tariff with their February 23, 2000, filing, that tariff would not be necessary if TeleDistance is not going to be an AOS company, and the applicants requested that they be allowed to withdraw the proposed AOS tariff filed by TeleDistance on February 23, 2000.

On May 19, 2000, the applicants filed the latest draft of the customer notices that Touch America has proposed to the Federal Communications Commission (FCC) to inform customers of the change in their interexchange service provider. Touch America states it will send the notices to customers both before and after the closing of the sale of the stock of TeleDistance Holdings to Touch America.

Finally, in the May 19, 2000, filing the applicants' state that after discussions with Consumer Advocate, they have "agreed to reimburse customers for the PIC change charge for 60 days after the closing of the merger."

DISCUSSION

The Board will grant the applicants' request for waiver of 199 IAC 22.23(2), based upon the Board's understanding of the applicants' numerous filings and representations in this docket. Specifically, the Board notes that the customer notification form letters will tell customers that Touch America is their new long distance service provider; that there should not be any charges associated with the change; and that "your existing long distance service and its prices will not change." The notice will not tell customers that Touch America has committed to preserving the existing rates and terms for 90 days from the date of the merger or that Touch America has agreed to reimburse customers for PIC change charges for 60 days after the closing. Without more, these omissions could lead the Board to deny the requested waiver.

However, the notice provides customers with a toll-free number they can call with questions. Moreover, the commitment to preserve existing rates for at least 90 days offers a greater level of rate certainty than the customers currently have with their existing service providers. Finally, the Board understands that if a current customer of a Qwest Sub decides, for any reason, to change from Touch America to some other interexchange carrier within 60 days of the date of the closing of the U S

WEST-Qwest merger, Qwest will reimburse the customer for any PIC change charges the customer may incur.

This final understanding is critical to the Board's decision to grant the waiver request. The Board believes that no Iowa telecommunications customer should ever pay a PIC change charge as a result of Qwest's decision to merge with U S WEST, forcing the divestiture of Qwest's in-region interLATA business. If an Iowa customer's transfer to Touch America leads that customer to change preferred interexchange carriers for any reason, for either interLATA or intraLATA service, that customer must not be required to pay a PIC change charge. Service provider mergers cannot be permitted to force customers to pay charges they would otherwise not have incurred.

Finally, based on the applicants' representations that TeleDistance and, subsequently, Touch America will not receive more than one-half of their respective Iowa intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones, the Board finds that neither TeleDistance nor Touch America will be an AOS company as defined in Iowa Code § 476.91(1)"a." Accordingly, it is not necessary for TeleDistance or Touch America to file a tariff for Board review and the applicants will be permitted to withdraw the proposed tariff identified as TF-00-42.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The request for waiver of 199 IAC 22.23(2), filed by the Qwest Subs on February 23, 2000, and joined by Touch America on April 10, 2000, is granted.
2. The applicants' request to withdraw the proposed tariff identified as TF-00-42, filed with the Board on April 28, 2000, is granted.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr. /s/ Diane Munns
Executive Secretary

Dated at Des Moines, Iowa, this 22nd day of June, 2000.